

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

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| In the matter of the proposed |) | NOTICE OF PUBLIC HEARING ON |
| amendment of ARM 4.5.201, 4.5.202, |) | PROPOSED AMENDMENT AND |
| 4.5.203, and 4.5.204 and the adoption of |) | ADOPTION |
| New Rule I relating to noxious weed list |) | |
| categories |) | |

TO: All Concerned Persons

1. On March 6, 2008, at 3:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on February 28, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

4.5.201 DESIGNATION OF NOXIOUS WEEDS (1) The department designates certain exotic plants listed in these rules as statewide noxious weeds under the County Weed Control Act 7-22-2101(5), MCA. All counties must implement management standards for these noxious weeds consistent with weed management criteria developed under 7-22-2109(2)(b), MCA, of the Act. ~~The department established three categories of the noxious weeds.~~

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The number of categories established by the department is self apparent and need not be stated in the rule.

4.5.202 CATEGORY 1 (1) through (2)(e) remain the same.
(f) Spotted knapweed (*Centaurea maculosa* strobe L. spp. micranthos =
Centaurea maculosa);
(g) through (l) remain the same.
(m) Houndstongue (*Cynoglossum officinale* L.); ~~and~~
(n) Yellow toadflax (*Linaria vularis*)- ; and

(o) Hoary alyssum (*Berteroa incana* L.).

AUTH: 80-7-802, MCA

IMP: 7-22-2101, MCA

REASON: The scientific community currently acknowledges *Centaurea stobe* as the scientific name of spotted knapweed.

The Montana Department of Agriculture received a recommendation from the Noxious Weed List Committee to list hoary alyssum as a Category 1 noxious weed. This plant has the potential for rapid spread and invasion of land in Montana. This plant is capable of economically and biologically adversely affecting range, forest, crop, and other lands. The designation as a Category 1 noxious weed will increase public awareness and recognition of this weed, encourage education, identification, and control, improve monitoring for infestations, improve control and containment of existing infestations, and provide for eradication of new or small infestations.

Weed control measures are a cost to public and private landowners through expenditures for herbicides, application costs, and/or mechanical control methods. The addition of hoary alyssum may result in some increased cost for control because it is already established in the state. However, in most counties where this invasive species is a problem, control measures are already in place as a result of previous inclusion of the species on individual county noxious weed lists and any increased cost should be minimal.

4.5.203 CATEGORY 2 (1) and (2) remain the same.

(a) Dyers woad (*Isatis tinctoria*);

(b) through (f) remain the same but are renumbered (a) through (e).

~~(g) (f) Tamarisk (saltcedar) (*Tamarix spp.*); and~~

~~(h) (g) Perennial pepperweed (*Lepidium latifolium*);~~

(h) Blueweed (*Echium vulgare*);

(i) Rush skeletonweed (*Chondrilla juncea*); and

(j) Yellow flag iris (*Iris pseudacorus*).

AUTH: 80-7-802, MCA

IMP: 7-22-2101, MCA

REASON: The Montana Department of Agriculture received a recommendation from the Noxious Weed List Committee to list blueweed as a noxious weed. The Noxious Weed List Committee has reviewed the biology of blueweed and has determined it exhibits rapid spread and invasion of land in Montana. This plant is capable of economically and biologically adversely affecting range, forest, crop, and other lands. The designation as a Category 2 noxious weed will increase public awareness and recognition of this plant, encourage education, identification, and control, improve monitoring for infestations, improve control and containment of existing infestations, and provide for eradication of new or small infestations.

The committee also recommended to reclassify rush skeletonweed and yellow flag iris from a Category 3 listed weed to Category 2 listed weeds. For years, iris and skeletonweed were only present in isolated areas of the state, but have recently begun to spread exponentially.

Blueweed is a new invader. However, in the counties where this invasive species is a problem, control measures are already in place as a result of previous inclusion of the species on individual county noxious weed lists. There will be little or no additional economic impact due to listing this plant. The yellow flag iris and rush skeletonweed were plants previously listed as a Category 3 weed. The economic impact to the counties and state will not change by listing these weeds as a Category 2 noxious weed. The hope is to contain and eventually eradicate these invasive species. The cost to everyone in the state will be much higher if every effort is not taken to prevent further invasion in Montana by these invasive species. The value of Montana's agricultural croplands, rangelands, timberlands, waterways, and open spaces is diminished as a result of their presence.

4.5.204 CATEGORY 3 (1) and (2)(b) remain the same.

(c) ~~Rush skeletonweed (*Chondrilla juncea*)~~ Knotweed complex (*Polygonum cuspidatum*, *Polygonum sachalinense*, *Polygonum polystachyum*);

(d) Eurasian watermilfoil (*Myriophyllum spicatum*); ~~and~~

(e) ~~Yellow flag iris (*Iris pseudacorus*)~~ Flowering rush (*Buforus umbellatus*);
and

(f) Dyer's woad (*Isatis tinctoria*).

AUTH: 80-7-802, MCA

IMP: 7-22-2101, MCA

REASON: The Montana Department of Agriculture received a recommendation from the Noxious Weed List Committee to list the knotweed complex and flowering rush as Category 3 noxious weeds. The Noxious Weed List Committee has reviewed the biology of these plants and has determined they have the potential for rapid spread and invasion of land in Montana. These plants are capable of economically and biologically adversely affecting Montana's waterways, riparian areas, and other lands. The designation as a Category 3 noxious weed will increase public awareness and recognition of these weeds, encourage education or identification and control, improve monitoring for infestations, improve control and containment of existing infestations, and provide for eradication of new or small infestations.

The committee also recommended reclassifying Dyer's woad from a Category 2 listed weed to a Category 3 listed weed. Dyer's woad was recommended to be moved to Category 3 because control measures have been effective on this species and eradication is now possible.

Flowering rush and the knotweed complex are new invaders and are in isolated areas in Montana. However, in the counties where these invasive species are a problem, control measures are already in place as a result of previous inclusion on individual county noxious weed lists. There will be little or no additional economic impact due to listing these plants. There will be no change regarding the economic impact for Dyer's woad.

4. The rule proposed to be adopted provides as follows:

NEW RULE I CATEGORY 4 – WATCH LIST (1) Category 4 plant species are plants that are invasive and may cause significant economic or environmental impacts if allowed to become established in Montana. Research and monitoring for Category 4 plant species may result in future listing as a Category 1, 2, or 3 noxious weed in Montana. Plant species designated as a Category 4 plant are prohibited from sale in or into Montana.

(2) The following are designated as Category 4 noxious weeds:

(a) Scotch broom (*Cytisus scoparius*).

AUTH: 80-7-802, MCA

IMP: 7-22-2101, MCA

REASON: The Montana Department of Agriculture received a recommendation from the Noxious Weed List Committee to create a Category 4 designation and to list scotch broom in this category. The intent of Category 4 listings is to prohibit nursery trade for plants that are invasive and may cause significant economic or environmental impacts if allowed to become established in Montana.

Scotch broom - The Noxious Weed List Committee has reviewed the biology of scotch broom and has determined it has the potential for rapid spread and invasion of land in Montana. This plant is capable of economically and biologically adversely affecting Montana's waterways, riparian areas, and other lands. Designation as a Category 4 noxious weed will increase public awareness and recognition of this weed, encourage education, identification, and control, improve monitoring for infestations, improve control and containment of existing infestations, and encourage eradication of new or small infestations.

There may be a small initial economic impact to the nursery industry because nurseries will not be able to sell scotch broom or other future Category 4 plants. Sale of these plants in Montana is believed to be minimal because of the invasive nature of these plants. The cost to the citizens of Montana will be much higher if efforts are not taken to prevent establishment in Montana by invasive species. The value of Montana's agricultural croplands, rangelands, timberlands, waterways, and open spaces will be reduced if invasive species become established.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions orally or in writing to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-

0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than 5:00 p.m. on March 13, 2008.

6. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF AGRICULTURE

/s/ Ron De Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

Certified to the Secretary of State, February 4, 2008.